

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**GREGORY MCFERREN  
ANTHONY FRANKLIN**

**v.**

**WILLIAM BRUCE MITTENBURG**

**AND**

**SWIFT TRANSPORTATION COMPANY OF  
ARIZONA, LLC d/b/a SWIFT  
TRANSPORTATION COMPANY, INC.**

**SWIFT LEASING CO, LLC**

**Case No.: 2:17-cv-2767**

**FIRST DEFENDANT**

**SECOND DEFENDANT**

**THIRD DEFENDANT**

**JURY TRIAL REQUESTED**

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**COMPLAINT**

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**JURISDICTION AND VENUE**

1. The Plaintiff, Gregory McFerren, (hereinafter “McFerren”) is an adult resident citizen of the State of Tennessee, and who was injured as a driver of an automobile in Shelby County, Tennessee when his vehicle was hit by a commercial tractor-trailer combination driven and owned, leased and and/or operated by one or more of the Defendants.
2. The co-Plaintiff, Anthony Franklin, (hereinafter “Franklin”) is an adult resident citizen of the State of Tennessee, and who was injured as a passenger in the same automobile as McFerren, in Shelby County, Tennessee when his vehicle was hit by a commercial tractor-trailer combination driven and owned and/or operated by one or more of the Defendants, after disregarding the stop traffic light.
3. Defendant, William Bruce Mittenburg (hereinafter “Mittenburg”), is an adult resident citizen of 2350 Bishop Road, Trl 81, Abilene, Texas 79606 in Taylor County in Texas. Defendant Mittenburg was an employee, lessee, agent, and/or agent of Defendant, Swift Transportation Company, Inc., and worked in the line and scope of his employment as a truck driver for Swift Transportation Company, Inc., at the time of the incident made the basis of this complaint.

4. Defendant, Swift Transportation Company of Arizona, LLC d/b/a Swift Transportation, Inc. (hereinafter "Swift Transport"), is a foreign company domiciled in Delaware with its corporate headquarters in, 2200 S 75TH AVE , PHOENIX, AZ 85043-7410. Swift Transport's registered agent for service of process in Tennessee is National Registered Agents, Inc. Suite 2021, 800 S. Gary Street, Knoxville, Tennessee 37929-9710. At all times material to this action, Swift Transport was the Owner, Operator and Employer of Mittenburg and the commercial vehicle subject matter of this action.

5. Defendant Swift Leasing Co; LLC ( hereinafter "Swift Leasing") is a foreign company domiciled in Delaware with its corporate headquarters in, 2200 S 75TH AVE , PHOENIX, AZ 85043-7410. Swift Leasing's registered agent for service of process in Tennessee is National Registered Agents, Inc. Suite 2021, 800 S. Gary Street, Knoxville, Tennessee 37929-9710. At all times material to this action, Swift Transport was the Lessor, Owner, Operator and Employer of Mittenburg and the commercial vehicle subject matter of this action.

6. The amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (**\$75,000**).

7. This court has jurisdiction over this matter pursuant to 28 U.S.C §1332, since there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00. Additionally, this Court has Federal Question jurisdiction under 28 USC §1331 since this matter includes allegations related to Federal statutes. Venue is proper in the Western District of Tennessee based on 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district as follows:

- a. Defendants operate the commercial vehicle which caused the wreck;
- b. Fail to use the knowledge and skills necessary to operate a commercial motor vehicle safely;
- c. Fail to use proper visual search methods as required by the Federal Motor Carrier Safety Regulations;
- d. Fail to use proper speed management techniques as required by the Federal Motor Carrier Safety Regulations;

## **FACTS**

8. On November 15, 2016, the Plaintiffs had the green light and were traveling eastbound Shelby Drive to northbound Getwell Road when Freightliner Truck with driver William Mittenburg going Westbound on Shelby Drive disregarded traffic device, ran the red light and crashed into the vehicle driven by McFerren.

9. Defendant Mittenburg was operating a commercial motor vehicle owned, leased and/or operated by Swift Transport disregarded stop sign and crashed into vehicle occupied by McFerren and Franklin (referred to hereinafter collectively as "Plaintiffs").

10. At all times herein mentioned, the Plaintiffs' vehicle was operated in a reasonable and prudent manner, with due caution and regard for the motor vehicle laws of the State of Tennessee.

11. Mittenburg failed to keep a proper lookout, failed to maintain a safe distance, failed to properly manage his speed, failed to properly manage his space, and/or failed to observe the Plaintiffs' vehicle and otherwise violated the Rules of the Road and/or Federal Motor Carrier Safety Regulations when his commercial vehicle collided with the Plaintiffs' vehicle.

12. The Plaintiffs sustained personal injuries directly and proximately caused by the wrongful acts and/or omissions of the Defendants.

### **COUNT ONE**

13. The Plaintiffs re-allege and incorporate by reference the foregoing paragraphs as if set forth fully herein and further aver as follows:

14. At approximately 4.20 p.m. on the 15th day of November, 2016, Mittenburg did wrongfully and negligently:

a. fail to use proper space management techniques as required by the Federal Motor Carrier Safety Regulations;

b. fail to use proper hazard perception techniques as required by the Federal Motor Carrier Safety Regulations;

c. fail to yield the right of way to the vehicle in which The Plaintiffs were driver and passenger;

d. fail to proceed cautiously into intersection and a roadway;

e. fail to keep a proper lookout;

f. fail to take reasonable evasive action to avoid causing a wreck;

g. fail to obey traffic signals;

h. fail to comply with Federal Motor Carrier Safety Regulations regarding Commercial Driver's Hour's limit;

i. inspect the Swift Transport and Swift Leasing's commercial vehicle, including the equipment thereon;

j. violate the Federal Motor Carrier Safety Regulations;

k. violate Tennessee motor vehicle statutes;

l. violate company policy;

m. cause and/or contribute to the occurrence made the basis of this lawsuit.

n. commit other such acts and omissions as will be shown through discovery and proven at the trial of this action.

15. At the time of the incident made the basis of this lawsuit, Mittenburg was acting in the line and scope of his employment and/or agency for Swift Transport.

16. Plaintiffs allege that, as a direct and proximate consequence of the aforesaid wrongful and negligent conduct of Mittenburg, the Plaintiffs were caused to suffer injuries.

## **COUNT TWO**

17. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs as if set forth fully herein and further aver as follows:

18. At approximately 4.20 p.m. on the 15th day of November 2016, and in addition to the acts and omissions of Mittenburg, which were imputed to, ordered, authorized, known to, ratified and/or condoned by Swift Transport and Swift Leasing, by one or more of the following acts or omissions, was wrongful and negligent when it:

a. operated a commercial carrier with inadequate safety management controls;

b. entrusted a vehicle to an incompetent driver with knowledge of said driver's incompetence;

c. hired and selected the operator of the commercial vehicle which was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

d. trained the operator of the commercial vehicle which was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

e. supervised and monitored the operator of the commercial vehicle which was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

f. used an unskilled, unknowledgeable, unqualified or disqualified driver;

g. retained the employment of the operator of the commercial vehicle which was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

h. violated the Federal Motor Carrier Safety Regulations;

i. violated Tennessee motor vehicle statutes;

j. violated its own company policy;

k. aided and abetted its employees in the violation of the Federal Motor Carrier Safety Regulations;

l. aided and abetted its employees in the violation of the Tennessee motor vehicle statutes;

m. conspired with its drivers in order to violate the Federal Motor Carrier Safety Regulations;

n. conspired with its drivers in order to violate the Tennessee motor vehicle statutes;

o. failed to implement and enforce means to prevent its drivers and equipment from operating unsafely or in violation of applicable laws, regulations and/or rules that a reasonable, prudent motor carrier would have implemented and enforced;

p. maintained the commercial vehicle, including the equipment thereon, that was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

q. failed to ensure that the commercial vehicle that that was involved in the collision with the vehicle in which The Plaintiffs were driver and passenger had the parts and accessories necessary for safe operation;

r. inspected the commercial vehicle, including the equipment thereon, which was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

s. equipped the commercial vehicle that was involved in the collision with the vehicle in which the Plaintiffs were driver and passenger;

t. caused and/or contributed to the occurrence made the basis of this lawsuit; and

u. committed other such acts and omissions as will be shown through discovery and proven at the trial of this action.

19. As a direct and proximate consequence of the aforesaid wrongful and negligent conduct of Swift Transport and Swift Leasing, McFerren and Franklin were caused to suffer injuries.

### **COUNT THREE**

20. Plaintiffs re-allege and incorporate by reference the foregoing paragraphs as if set forth fully herein and further aver as follows:

21. The above-described conduct by Defendants Mittenburg, Swift Transport and Swift Leasing was gross, willful, wanton and reckless negligence, and creates an independent tort on the part of these Defendants.

**WHEREFORE, PREMISES CONSIDERED**, the Plaintiffs demand judgment against Defendants Mittenburg, Swift Transport and Swift Leasing for compensatory and punitive damages in an amount or amounts to which a jury determines each is entitled, plus interest, attorneys' fees, and costs.

RESPECTFULLY SUBMITTED this the 17<sup>th</sup> day of October 2017.

/s/ Olufemi G. Salu  
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**PLAINTIFFS HEREBY DEMAND TRIAL BY JURY**

**DEFENDANTS TO BE SERVED BY PLAINTIFFS AS FOLLOWS:**

Name: William Bruce Mittenburg

Address: 2350 Bishop Road

Trl 81

Abilene, Texas 79606

Name: Swift Transportation Company of Arizona, LLC

d/b/a Swift Transportation, Inc.

Address of Registered Agent in Tennessee:

National Registered Agents, Inc.

Suite 2021, 800 S. Gary Street,

Knoxville, Tennessee 37929-9710

Name: Swift Leasing Co, LLC

Address of Registered Agent in Tennessee:

National Registered Agents, Inc.

Suite 2021, 800 S. Gary Street,

Knoxville, Tennessee 37929-9710